

2004 IRB LEXIS 113, *; 2004-10 I.R.B. 544;
REV. RUL. 2004-8

LEXSEE REV. RUL. 2004-8, AT 544

Rev. Rul. 2004-8

Section 126.--Certain Cost-Sharing Payments

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March 8, 2004

[*1] ISSUE

Is the Forest Land Enhancement Program (FLEP) substantially similar to the type of programs described in § 126 (a)(1) through (8) of the Internal Revenue Code, so that the FLEP is within the scope of § 126(a)(9) and, thereby, cost-share payments received under the FLEP are eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The FLEP, authorized under the provisions of Title VIII of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, which amended the Cooperative Forestry Assistance Act of 1978, Pub. L. No. 95-313, 92 Stat. 365, is a voluntary program for non-industrial private forest landowners that provides technical, educational, and cost-share assistance to encourage the long-term sustainability of non-industrial private forest land and related resources. The FLEP replaces the Stewardship Incentives Program (SIP), which was determined in Rev. Rul. 94-27, 1994-1 C.B. 26, to be within the scope of § 126(a)(9), and the Forestry Incentives Program (FIP), which is listed in § 126(a)(8). The SIP provided for the cost-sharing of a wide [*2] range of multiple resource management practices. The FIP provided for cost-sharing of timber stand improvements, site preparation for natural regeneration, and tree planting practices. The FLEP encompasses all of the cost-share practices authorized under both the SIP and the FIP.

A landowner who wishes to participate in the cost-share component of the FLEP must develop and implement, in cooperation with the state forester, another state official, or a professional resources manager, a management plan that addresses site specific activities and practices. The cost-share practices are limited to the treatment of 1,000 acres per year and must be implemented for a period of at least 10 years. The maximum cost-share payment for any practice may be up to 75 percent. The aggregate payment to any one landowner through 2007 may not exceed \$ 100,000.

The Secretary of Agriculture has determined that cost-share payments under the FLEP are primarily for the purpose of conservation.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1) through (8). Under § 126(a)(9), a program affecting [*3] "small watersheds" that is administered by the Secretary of Agriculture also is eligible for § 126

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treatment if the Commissioner determines that the program is substantially similar to the type of programs described in § 126(a)(1) through (8). See § 16A.126--1(d)(3) of the temporary Income Tax Regulations for the definition of "small watershed."

Once the Commissioner has determined that a program is substantially similar to the types of programs described in § 126(a)(1) through (8), taxpayers receiving cost-share payments under that program must determine what portion of the cost-share payments is excludable from gross income under § 126. See § 126(b)(1), and § 16A.126-1, relating to the partial exclusion of certain cost-share payments, to determine what portion of the cost-share payments is excludable from gross income under § 126.

HOLDING

The FLEP is substantially similar to the type of programs described in § 126(a)(1) through (8) within the meaning of § 126(a)(9). All or a portion of cost-share payments received under the FLEP is eligible for exclusion from gross income to the extent permitted by § 126. See § 126(b)(1) and § 16A.126--1 to determine what portion, if any, of the [*4] cost-share payments is excludable from gross income under § 126.

DRAFTING INFORMATION

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